

W.B.F.No.-3701

HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE

DISTRICT : SOUTH 24-PARGANAS.
IN THE COURT OF : SMALL CAUSES COURT, SEALDAH, 24-PGS.(S).
PRESENT : SRI ANNADA SANKAR MUKHOPADHYAY, JUDGE,
SMALL CAUSES COURT, SEALDAH, 24-PGS.(S).

TUESDAY, THE 31ST MAY, 2016

TITLE SUIT NO. 92 OF 2015
[CIS Registration No. 9 of 2016]

**SRI TARAK BASAK &
OTHERS**

VERSUS

**SRI AMAL BASAK &
ANOTHER**

.....**PLAINTIFFS**

.....**DEFENDANTS**

Give date, 18.05.2016 the suit / case coming for final hearing in the presence of:

Sri. Subrata Patra

Advocate for Plaintiffs

And

Sri Samar Chatterjee & 3 others

Advocates for the Defendants

and having stood for consideration to this day, the court delivered following judgement.

This is a suit for Partition.

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The brief facts of the plaintiff so appears from the plaint is that premises no. 122 Bidhannagar Road (formerly Ultadanga Main Road), P.S Manicktala, Kolkata 700 067, under District South 24 Parganas standing over the land measuring about 1 cottah 7 chittaks, being a pucca two storied building (hereinafter referred as the 'Suit Property') was acquired by one Bhadreswar Basak, grand-father of the plaintiff no.1, 2 and 4 and the father-in-law of the plaintiff no.3. Said Bhadreswar Basak died on 14.03.1960 leaving behind his three sons namely Amal Kumar Basak (defendant no.1), Nirmal Kumar Basak, Bimal Basak and daughter Panu Pal @ Panu Rani Pal. Nirmal Kumar Basak died on 27.10.1996 as bachelor and his undivided share in the suit property devolved upon his brothers and sister. Bimal Basak died on 14.12.2009 leaving behind his sons, the plaintiff nos. 1 and 2, wife being plaintiff no.3 and the daughter, plaintiff no.4. Defendant no. 2 Panu Rani Pal is residing at her matrimonial home and the plaintiff nos. 1 to 3 and defendant no. 1 are residing at the suit property. As per the devolution of the property on death of their predecessors, plaintiffs all together and the defendant no. 1 and 2 are entitled to 1/3rd share each of the undivided suit property. The allegation of the plaintiffs is that the defendants are trying to take full possession of the suit property illegally and forcefully more than their share. Defendant no.1 is in possession of 2 big sized rooms in ground floor and two rooms in the first floor of the suit property and put iron gate in their occupation over balcony whereas the plaintiff is in occupation of one room in the first floor and a common user of bath and privy. Plaintiffs are also deprived from the KMC supplied water due to illegal acts of the defendants. Due to extreme predicament, plaintiff has to take an accommodation on rental for the rent of Rs. 2500/-. On the contrary defendant no.1 let out the part of the suit property to third party on hefty salami where they run a hotel. The electric connection of the plaintiffs got disconnected by the defendant no.1 to which they are entitled.

It became impossible for the plaintiffs to reside in the suit property with the defendants jointly and approached the defendants for partition of the suit property on various occasions but the defendants did not found to be cordial in acceptance of the said proposal. Defendant no.1 on the contrary trying to evict the plaintiffs forcefully from the suit property. Plaintiff lodged complaint before the Manicktala P.S but the police took no step for which plaintiff have to file a case under section 144 Cr.P.C.

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Having no other alternative recourse, plaintiffs filed the instant suit praying for partition of the suit property by metes and bounds and consequential relief.

After issuance of summons and subsequent receipt, defendants appeared and defendant no.1 filed written statement. Defendant no.2 filed written statement together with counter claim.

The brief contention, excluding evasive denials, of the defendant no.1 is that though he inherited $1/3^{\text{rd}}$ share of the undivided suit property but subsequently, defendant no.2 sold out her undivided share in the suit property to him by registered deed of sale as a result to which he became owner of $1/2$ share of the suit property. He further contended that with the death of his bachelor brother Nirmal Kumar Basak, his undivided share devolved upon him and predecessor in interest of the plaintiffs for which he became the owner of the $2/3^{\text{rd}}$ undivided share in the suit property. According to him, plaintiffs are the joint owners of remaining partition of the suit property. He contended that the plaintiffs are enjoying more than their share in the suit property. He denied and disputed the other averments and allegations of the plaintiffs.

Defendant no.2 stated in her written statement and counter claim that the share so computed by the plaintiffs is wrong. She stated that plaintiffs are jointly entitled to $1/3^{\text{rd}}$ share in the suit property taking into consideration of the share of Nirmal Kumar Basak. She, according to her, is entitled to defendants are entitled to $1/3^{\text{rd}}$ share each in the undivided suit property. She further contended that the defendant no.1 out of greed purchased her $1/3^{\text{rd}}$ share under-valued in fraudulent manner and no share of her passed upon the defendant no.1. She claimed for a declaration that she is owner of $1/3^{\text{rd}}$ share of the undivided suit property. She denied allegations labelled against her by the plaintiffs and stated that the defendant no.1 is illegally enjoying rent of Rs4500 per month in respect let out portion of the undivided suit property. She further prayed for a declaration that she plaintiffs are entitled to $1/3^{\text{rd}}$ share jointly of the suit property and the defendant no.1 and defendant no.2 be declared as owners of $1/3^{\text{rd}}$ share each of the suit property.

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ISSUES

Considering the pleadings of the both sides, following issues were framed and re-casted for meaningful adjudication:

1. Is the suit maintainable in its present form and prayer?
2. Is the counter claim maintainable in law?
3. Have the plaintiffs and defendants any cause of action to file the instant suit and counter claim?
4. Are the plaintiffs and defendants co-owners of the suit property?
5. Are the plaintiffs and defendant no.2 entitled to the decree as prayed for?
6. To what other relief plaintiffs/defendant No.2 are entitled for?

Witnesses and Documents in support to the facts

To prove the case, plaintiffs adduced Plaintiff no.1 Sri Tarak Basak as PW1 who filed his evidence according to Order 18 Rule 4 C.P.C. He produced and formally proved his PAN card (Exhibit 1), KMC Tax receipt in original (Exhibit 2), Electricity Bill issued by CESC (Exhibit 3), stamp and seal over the complaint lodged with police (Exhibit 4), Two G D Slip (Exhibit 5 and 5/A), three ration cards (Exhibit 6 series), death certificates of his father and elder brother of his father (Exhibit 7 and 7A).

Defendant no.2 Panu Rani Pal adduced herself as DWI. Defendant no.1 did not adduce any evidence though he got opportunity. Due to absence of the DWI, the Defendant no.1 was unable to cross examine her and it appears that the DWI was scared to face cross examine by DWI. The Defendant no.1 did not get opportunity to cross examine DWI and therefore the evidence of the DWI as regard to the interest of the defendant no.1 is to be considered in this judgement accordingly.

All the sides filed their written arguments.

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DECISION WITH REASONS

Issue nos. 1 to 3: All these issues are taken up for discussion for the sake of brevity and convenience as they are interlinked with each other.

The contention of the defendants in respect to these three issues are evasive in nature. Defendants did not produce any evidence in support of such contention.

On perusal of the evidence of both the sides, this court does not come into such a conclusion that the suit as well as counter claim is not maintainable. It also appears that there is cause of action to file the instant suit as well as counter claim. Therefore, all these issues as regard to the plaint are decided in favour of the plaintiffs and those of the counter claims are decided in favour of the defendant no.2.

Issue nos. 4 to 6: All these issues are taken up together for the discussion in the interest of brevity and convenience keeping the repetition at the bay.

PW-1 in his evidence stated that they jointly and the Defendant no.1 and Defendant no.2 separately are entitled to get 1/3rd share each in the undivided suit property. During cross examination by the Defendant no.2 he was strict to the same. While he was cross examined by defendant no.1, he replied about his lack of information as regard to purchase of a portion of the suit property by defendant no.1. It is not the look out of the plaintiffs too to get information about the share of the defendant and the plaintiffs are desired to be restricted to their interest. Defendant-1 during cross-examination of PW-1 tried to shift the onus as regard to the devolution of share of defendant-2 upon the defendant-1 to the plaintiff which he could not.

From the evidence of all the parties to this suit, it clearly appears that the plaintiffs and both the defendants have their undivided share in the suit property. Plaintiffs as well as the defendant-2 did not file any deed as regard to their title over the suit property. From the Ext.2, it appears that all the

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parties to this suit are recorded occupier of the suit property in the record of KMC. The right, title and interest of the plaintiffs in the suit property is beyond doubt. Therefore, it can fairly be held that the plaintiffs and defendants are co-owners of the suit property.

PW-1 was cross-examined by the defendant-1&2 fairly and sufficiently. From the evidence of PW-1, it clearly appears that after demise of the original owner of the suit property namely, Bhadreswar Basak and after the death of his son Nirmal Kr. Basak as bachelor, the suit property devolved upon Amal Kr. Basak, Bimal Kr. Basak and Panu Rani Pal. They are entitled to equal share of the un-partitioned suit property. Plaintiffs are the legal heirs of Bimal Basak and they have right to get the share of the portion of said Bimal Basak. The plea of the plaintiffs is for partition of the suit property by metes and bounds between the plaintiffs on one side and the defendants on the other. It is the admitted position from the evidence of the parties that the plaintiffs are jointly entitled to 1/3rd share of the undivided suit property.

Defendant-2 in the counter claim prayed for declaration of her share together with the share of the plaintiffs and a further declaration that the sale deed No.497 of 1994 be declared as void, fraudulent and undervalued. But during the evidence of the said defendant as DW-1, she did not produce any such deed. Therefore, the defendant-2 has no evidence to get the decree as she prayed by way of counter claim. She also avoided to face cross-examination by the defendant-1 by absenting herself without sufficient cause. Therefore, the defendant-2 is not entitled to get decree as prayed in the counter claim.

On the basis of the above observations and discussions in the body of the judgement and after consideration of the written notes of argument filed by the plaintiffs as well as the defendants separately, it is the opinion of this court that the plaintiffs are able to satisfy this court to get the decree and the defendant-2 failed. Thus, these issues are decided in favour of the plaintiffs in affirmative and against defendant-2 in negative.

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Accordingly, the suit succeeds but the counter claim failed.

C/F paid is correct.

Hence, it is,

ORDERED

That the suit be and the same is decreed on contest in favour of the plaintiffs and without cost and the counter claim is dismissed.

It is hereby declared that the plaintiffs are jointly entitled to get 1/3rd share of the suit property and the rest portion be kept for the defendants.

The parties are directed to make partition of the suit property amicably by metes and bounds within six months from the date of the order in terms of the share declared in the preliminary decree, failing which, either of the parties will be at liberty to make partition through Court as per law.

D/c by me.

Judge, S.C.C., Sealdah

Judge, S.C.C., Sealdah,
South 24-Parganas.